

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5811 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

C.T. SONARA

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner

MR HL JANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/05/97

ORAL JUDGEMENT

1. The petitioner, a Police Inspector of the Police Department of the State of Gujarat, filed this Special Civil Application and prayer has been made for quashing and setting aside of the order dated 7-11-1984 under which the respondent No.2 has ordered for recovery of Rs.36740-45 from the salary of the petitioner at the monthly installments of Rs.500/-.

2. The facts of the case as stated by the petitioner in the petition, in brief, are that the petitioner was allotted in the year 1979, a rent free accommodation in Adarshnagar, Ahmedabad, bearing Block No.39/464 as he was serving as Police Sub-Inspector in Ahmedabad. The petitioner was ordered to be transferred from Ahmedabad to Sabarkantha District and he was relieved on 2-1-1981. The petitioner retained the possession of the premises aforesaid on the pretext that he was not allotted premises at his transferred place. In the month of October, 1981, the petitioner was allotted a rent free accommodation at Ambaliara. After the allotment of the rent free accommodation at the aforesaid place, the petitioner came to Ahmedabad and vacated the aforesaid premises which was in his possession till then. The petitioner was in a hurry and therefore he asked his brother-in-law, Shri M.S. Parmar, to hand over the key of the premises to the concerned Officer of the department, but his brother-in-law forgot to do so. The petitioner averred that, it seems that thereafter one Mr. V.J. Desai, Police Inspector, broke open the lock of the aforesaid premises and entered in possession thereof.

3. Under the notice dated 6-10-1982, annexure 'A', of the Director of C.I.D., Ahmedabad, the petitioner was called upon to vacate the official quarter and to hand over its possession within seven days from the receipt thereof. It has further been stated in the notice that in case he fails to comply with the notice, accordingly legal steps to take over the possession under sec.31(2) of the Bombay Police Act would be commenced against him. After the receipt of the said notice, the petitioner came to Ahmedabad and gave in writing that the premises are in possession of Shri V.J. Desai who had broken the lock of the premises and the possession of the premises may be taken from Shri V.J. Desai.

4. The petitioner was served with another notice dated 7-2-1983 and he was called upon to vacate the premises within seven days, failing which action under sec.31(2) of the Bombay Police Act would be taken. In this notice, the petitioner was called upon to pay in the treasury the amount of outstanding rent with effect from 2-1-1981 at the rate of 10% of the pay plus Rs.10/- as service charges for the period from 3-1-1981 to 31-3-1983.

5. The department under its notice dated 28th March, 1983, with reference to its earlier notice dated 7th February, 1983, informed the petitioner that he was duty bound to hand over the possession of the quarter in

question under written communication to the office. If any unknown person is in occupation of the said quarter, having entered therein by breaking open the lock without his knowledge, he is at liberty to take legal steps against the trespasser. He was called upon to show cause as to why he has not complained about such a trespass to the department so far. It has further been informed in the letter that so long as the petitioner does not vacate and hand over the possession of the quarter in question, it will be treated against his name, and he was directed to taken note that he will be held liable to bear and pay the usual rent for the said period. He was further called upon to pay the economic rent along with the usual service charges as per the details shown in the accompanied statement and to get the amount credited in treasury and to send a copy of the challan in proof thereof. He was further called upon to hand over the possession within 15 days, failing which the market rent would be charged.

6. The petitioner was thereafter served with a memo dated 5-10-1983, annexure 'D' and he was informed that as per the Government resolution dated 22-10-1982 issued by the Public Works Department (Roads & Building) Gandhinagar, the market rent of the disputed block No.39 has been fixed at Rs.1251-80ps. per month. He was called upon to pay Rs.36740-80. Vide memorandum dated 6-10-1983, the petitioner has been informed that the possession of the quarter has been taken on 13th June, 1983 from Police Inspector Shri V.J. Desai. The petitioner was called upon to show cause as to why the departmental inquiry should not be initiated against him.

7. Under the memo dated 14th August, 1984, the petitioner was called upon to deposit into treasury an amount of Rs.36740-45 within seven days. Further notice was given in this respect to the petitioner on 28th September, 1984. On 7-11-1984, order has been passed to recover the aforesaid amount by way of monthly installments of Rs.500/- from the petitioner. Hence, this Special Civil Application before this Court.

8. Affidavit-in-reply has been filed by the respondent in this case on 3-3-1997. On the direction of this Court, the Director General of Police, Gujarat State, filed his affidavit on 2nd April, 1997. The counsel for the respondents produced various Government Resolutions on the record of this petition.

9. The learned counsel for the petitioner contended that Sec.31 of Bombay Police Act permits the authority to

take action against the petitioner for not vacating the premises, and the petitioner should be punished on conviction, but that section gives no power or authority to the department to recover the rent that may be due from the petitioner. The second contention has been made that if at all the petitioner is liable to pay any rent and the authorities have any power to recover the rent, it can only be the economic rent as already conveyed by the respondent No.2 under its communications, and as such, that authority has no power to recover the amount in excess of the rent i.e. to say 10% of the basic pay plus Rs.10/- as service charges. Assuming for the sake of arguments that the authority has power to recover the rent at market rate, it can only be recovered from the date of the aforesaid resolution of the Government dated 28-10-1982 as that resolution has not been given retrospective effect. It has next been contended that the amount of the rent for which the petitioner is made liable is not definite and precise in the sense whether the petitioner is liable to pay the economic rent or the market rent. The respondent No.2 is not competent to adjudicate upon the same and it will be open to the respondents to file a civil suit to recover the outstanding rent. The respondent No.2 cannot itself determine the amount and realise the same. Only remedy could have been to file a civil suit. Further contention has been made that the petitioner is entitled for rent free accommodation and till he got the rent free accommodation at the transferred place, he is not liable to pay any rent in respect of the premises at Ahmedabad. Lastly, the learned counsel for the petitioner contended that the respondent No.2 is not entitled to recover the amount of rent from the petitioner at the rate of Rs.500/- p.m. from the salary of the petitioner in view of the provisions of sec.60 of the C.P.C. read with sec.156 of the Bombay Land Revenue Code. In support of his contention, the counsel for the petitioner placed reliance on the decisions of this Court in the following cases:

S.C.A. No.4618/91 decided on 12th August, 1991.
S.C.A. No.5111/96 decided on 3rd September, 1996.
S.C.A No.10794/95 decided on 19th December, 1996
and
S.C.A No.657/80 decided on 21st March, 1980.

10. Controverting the contentions raised by the learned counsel for the petitioner, the counsel for the respondents contended that the petitioner had unauthorisedly occupied the premises at Ahmedabad. On transfer, the petitioner could have retained the premises

for one month and thereafter he could have retained the premises only with prior approval of the department. The petitioner at no point of time prayed for retention of the premises. He has illegally retained the premises, and as such, as per the provisions of the Government Resolution dated 22-10-1982, he is liable to make the payment of the market rent for the period for which he illegally retained the quarter. It has next been contended that for the recovery of the amount of the rent for illegally retaining the possession of the Government premises which has been given to the petitioner at Ahmedabad, the department was not required to file any civil suit. What amount has to be paid is laid down under the Government Resolution and the petitioner being the Government servant is liable to pay the amount for which no adjudication is called upon by the department in the civil suit. Lastly, it is contended that the petitioner has deliberately managed to continue in the possession of the quarter for the benefit of his friend, a good neighbour, an Inspector of the Police department itself.

11. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

12. The petitioner was allotted a rent free accommodation at Adarshnagar, Ahmedabad, bearing Block No.39/464 as he was in service of the Police department at Ahmedabad. He was transferred to Sabarkantha district and he was relieved from Ahmedabad office on 2-1-1981. As per the Government Resolution of the Public Works Department, Sachivalaya, Gandhinagar, dated 5-6-1975, a Government servant on his transfer could have retained the accommodation for one month after date of the transfer. Further extension under the said resolution was permissible if the transfer is made in the midst of an academic term. In such case, the maximum period of occupation should be coterminus with the end of an academic term. The resolution dated 24th June, 1981 of the Department of Roads & Building is relevant to be referred herein, and this resolution also permits the retention of the Government Quarter by the Government servant on transfer for a period of one month from the date of transfer. However, the retention of the quarter beyond one month could have been permissible in case the transfer is effected during the academic year, and if the transferred employee desires to continue to occupy the premises for the facility of their school or college going children then extension could have been only upto 31st May of the relevant year.

13. Then comes the resolution dated 22nd October, 1982, and under this resolution, after transfer, a Government servant could have retained the quarter for two months. The learned counsel for the petitioner contended that the resolution dated 22nd October 1982 is not applicable to the present case as it has not been given retrospective effect. However, as per the resolutions dated 5th June, 1975 and 24th June, 1981, the petitioner could have retained this quarter till 2nd February, 1981. The learned counsel for the petitioner very fairly conceded, on putting a question by the Court, that the petitioner has not made any application for extension of the period for retention of the quarter. The learned counsel for the petitioner also very fairly submitted that he is not in a position to say whether any of his children were school or college going at the relevant time. The transfer, no doubt, has been made in the month of January, 1981, and, in case, the petitioner had any school or college going children, he could have legitimately prayed for the extension of the time for retention of the quarter till 31st May, 1981. The petitioner has not applied for the extension of the time which goes to show that he was not having any school or college going children. However, the learned counsel for the petitioner stated that the quarter was retained by the petitioner till October, 1981 and his family was residing therein, and he shifted his family to District Sabarkantha in the month of October, 1981 when the quarter was allotted to him there. So the fact that his family was continued at Ahmedabad till October, 1981 further goes to show that he was not having any school or college going children. The petitioner has retained this quarter so that he may continue his family at Ahmedabad. The retention could have been only for one month, and in case of the transfer in the midst of an academic term, till 31st May, 1981, with prior approval of the department, but that is not the case here, as stated earlier. Beyond one month from the date of his relieving from Ahmedabad, the petitioner has no legal right to retain the possession of the quarter. The Police Officers upto the rank of Inspector are to be provided with a rent free accommodation, and on transfer the premises at Ahmedabad has to be allotted to the other Police Officer posted at Ahmedabad or waiting in the queue. The justification given by the petitioner for retention of the quarter is that he was not allotted the quarter at District Sabarkantha. The learned counsel for the petitioner has failed to show any resolution of the Government or any other provision from a rule or Act that an Officer of the rank of Inspector or Sub-Inspector, on his transfer, could have retained the quarter at the

place, wherefrom he is transferred, till he is allotted a rent free accommodation at the transferred place.

14. From the resolution of the Home Department dated 30th November, 1976, it is clear that the Police Officers who are entitled to rent free accommodation but to whom rent free accommodation is not provided should be granted House Rent Allowance at the rates as specified in sub-para (iii) of para one of the Government Resolution dated 1-12-1975. Reference may have to the resolution of the Finance Department dated 15th May, 1981 which has amended the earlier resolutions including the resolution dated 1-12-1975. Under this resolution, the Government revised the rates of H.R.A. in lieu of rent free accommodation. The petitioner was entitled for rent free accommodation and in case it is not allotted then he was entitled for the House Rent Allowance as per the resolution of the Government dated 15th May, 1981. It may not be possible to make available a rent free accommodation to the transferee immediately at the transferred place. So where rent free accommodation could not be made available immediately, then in that case, an Officer who is entitled for rent free accommodation will get the House Rent Allowance. So the justification given by the petitioner to retain the quarter till October, 1981 on the ground of non-allotment of the rent free accommodation at Sabarkantha District is wholly illusory, unjustified and contrary to the resolutions of the Government. The petitioner was a Police Officer of the rank of Sub-Inspector at that time, and now an Inspector and he has taken the law in his own hands. Instead of exhibiting himself as a law abiding Officer of the Police department, he has acted contrary to the Government resolutions and has gone to the extent of now saying before this Court that no market rent could have been realised from him or the amount could have been realised only after the department filed a civil suit and the Court has adjudicated the liability of the petitioner.

15. This petition has been filed by the petitioner under Article 226 of the Constitution. The writ under Article 226 of the Constitution is not available to the petitioner as a matter of course or right. It is a discretionary remedy and in case, the conduct of the petitioner is not free from doubt and if the conduct of the petitioner is not fair and if the petitioner has not come up with clean hands before this Court, then this Court, though the petitioner may have a case on merits, may decline to give any relief in an appropriate case.

16. The counsel for the petitioner during the course of arguments admitted that Shri V.J. Desai was a Police Officer who was his next door neighbour in the Government quarters. He was also having rent free accommodation at Ahmedabad. The question which arises for consideration of this Court is whether the petitioner was really intending and willing to vacate the quarter at Ahmedabad after he was allotted the quarter at District Sabarkantha. The pleadings of the petitioner in this respect are very material and are to be referred. After getting the premises in District Sabarkantha, the petitioner came to Ahmedabad and he stated that he has vacated the aforesaid premises. It appears that the petitioner removed his household articles from the premises, but the question is whether he has vacated and handed over the possession of the premises to the department, is a real question. The petitioner admitted that he had not delivered the possession of the quarter to the department. What he stated that he was in a hurry, and therefore, he asked his brother-in-law, one Shri M.S. Parmar, to hand over the key of the premises to the person concerned and who forgot to do so. Very convenient plea has been taken. Instead of handing over the key to Mr. Parmar, his brother-in-law, the petitioner should have delivered the key to the concerned Officer of the department. What was the hurry, the petitioner has not disclosed in the Special Civil Application. Then the petitioner stated that "it seems that thereafter one Shri V.J. Desai, Police Inspector broke open the lock of the aforesaid premises and got the possession thereof. The petitioner has not taken any steps whatsoever after October, 1981 to see and check up whether his brother-in-law has handed over the key to the department or not. The petitioner felt content and satisfied and relieved of his duty to hand over the possession to the department by delivering the key to none other than his own brother-in-law. It is nothing but only a manufactured story for the purpose of defence. From this fact, it is clear that the petitioner deliberately and purposely retained the quarter with him and he was not intending to hand over the possession of the quarter to the department.

17. From the facts of the case, it necessarily follows that the petitioner has given the possession of the quarter to Shri V.J. Desai, Police Officer, one of his friends, and may be a good neighbour. The notice dated 6th October, 1982 has been given by the department to the petitioner but he has not handed over the possession of the quarter to the department. The petitioner had given an application dated 8-2-1983 to the

department in which he stated that he has already vacated the Government quarter and possession may be taken from Shri V.J. Desai, P.I., who broke open his lock and occupied the premises. In the application dated 8-2-1983, the petitioner stated that he has already vacated the Government quarter. It may be true that he had taken away his household articles, but that is not the end of the matter and it cannot be said that the premises has been vacated and possession thereof has been handed over to the department. He had shifted his family, but still he continued with the possession of the premises. The question is of handing over the possession of the premises to the department and then only it could have been said that it has been vacated. To keep the lock on the premises cannot be said to be a case of vacation of the premises. The petitioner has stated that the possession was with Shri V.J. Desai. So he permitted Shri V.J. Desai to enter in the premises and now when he has been called upon to pay the rent at the market value, he has taken the plea that Shri Desai had broke open the lock of the premises. It is a clear case of collusion in between the petitioner and Shri V.J. Desai, who is now reported to be dead. The petitioner has manipulated the things to retain the possession of the quarter, may be for his friend, may be a good neighbour, but the fact is that he has not handed over the possession of the quarter to the department. The possession has been taken by the department from Shri Desai on 13th June, 1983, but the petitioner cannot be relieved of his liability to pay the amount of the rent for the period ending on 13th June, 1983. The petitioner is a person concerned for the illegal retention of the possession of the quarter and the fact that the petitioner has not delivered the possession of the quarter to the department clinches the issue. This conduct of the petitioner itself is sufficient for disentitling him from getting any relief from this Court.

18. The counsel for the petitioner has placed strong reliance on the decisions of this Court, but those cases are of little help to the petitioner as in none of the case, the question of conduct of the person who approached this Court seeking relief under its extraordinary jurisdiction was gone into. More so, when the resolutions of the Government regulating the retention of the Government quarter after transfer and for charging of the rent for retention of the quarter after transfer are there, the liability of the petitioner has to be determined in accordance with the resolution for which the department is not required to file a civil suit. It is a case where the Government servant cannot

be equated with the tenant or the lessee or even the licensee. He could have retained the quarter till he was posted at a particular place. It is in lieu of his services which he renders to the Government, the rent free accommodation has been given to him. He has no right or justification whatsoever to retain the quarter beyond permissible limit laid down under the resolution. The resolution of the Government dated 29th December, 1972 is clear and retention of the quarter on transfer by a Government servant beyond the permissible period is a misconduct. It is different matter that the Police department has tolerated such a gross and serious misconduct committed on the part of a Police Officer of the rank of Inspector now, at the relevant time he was of the rank of Sub-Inspector. The Director General of Police has also admitted in the affidavit dated 2nd April, 1997 that the petitioner is prima-facie guilty of gross misconduct, disobedience of orders and violation of the rules. In one of the notices, the department has also called upon the petitioner to show cause as to why the departmental proceedings should not be initiated against him. The department has found that the petitioner had not handed over the possession of the block in question as a part of his duty or in the course of his official duty. It has further been found by the department that he has made a false report of having vacated the said block. The petitioner, as stated earlier, has not handed over the possession of the quarter to the department. It is not the case of the petitioner that at any point of time his brother-in-law has given the key of the quarter to the department. The action was proposed to be taken under the memorandum dated 6-10-1983 by the department, but for all these years no action has been taken. No explanation whatsoever forthcoming for this inaction or omission or slackness on the part of the department except to state that the matter is sub-judice before this Court. This Court has not restrained the department from proceeding against the petitioner departmentally for the alleged misconduct. However, it is for the department to regulate its own business, but I am constrained to observe that if the Police Department tolerates its own Officers who commits such a gross misconduct, indiscipline as well as of making a false statement then what will be the fate of the department, is a question for consideration of the department. If in such matters, drastic actions are not taken then it will encourage the Officers to retain the possession. The counsel for the respondents very fairly conceded that if the proceedings initiated under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972,

against the Officer for not vacating the Government premises will take years together, but the question does arise whether for getting the possession of its own property from its own servant on his transfer any proceeding is required to be taken by the department. It is the duty of the Officer to vacate the premises immediately on transfer and if he does not vacate the premises then he is not a person befitting to the service. If this course is adopted then the Officers would retain the quarter in the city like Ahmedabad as it has been conceded by the Government advocate before this Court. It is for the Government to make necessary provisions in this respect under the Act, 1972 or in the matter of Police Officer in the Police Act.

19. The provisions of sec.31 of the Bombay Police Act gives the power to the Government to get the possession of the premises from the Police Officer on his ceasing to be a Police Officer or whenever the State Government or any Officer authorised by the State Government in this behalf thinks it necessary and expedient or requires him to do so.

20. The validity of the provisions of sec.31 has not been challenged. Though this question is not in issue, but if we go by the provisions of sec.31 of the Police Act, which is a special Act, the department has sufficient powers to get the premises vacated without resorting to the remedies provided under the Act, 1972 or the civil suit. The petitioner has not controverted the affidavit filed by the Director General. This conduct of the petitioner constitutes a grave and serious misconduct. This conduct of the petitioner disentitles him from seeking any relief from this Court and the petition deserves to be dismissed only on this ground.

21. In view of these facts, the other contentions raised by the counsel for the petitioner need not be gone into. However, before parting with this judgment it is observed that it is not the case of the petitioner that in Ahmedabad city the premises of the area which was in possession of the petitioner could have been made available on the monthly rent less than what the market rent has been demanded from the petitioner.

22. In the result, this Special Civil Application fails and the same is dismissed with costs. The petitioner is directed to pay Rs.2000/- by way of costs of this petition to the respondent-State Government. The respondent-State Government is directed to deposit this amount of costs on receipt of the same in the welfare

fund which is there for the employees. The respondent No.2 is directed to realise this amount of costs at monthly installments of Rs.100/- from the salary of the petitioner. Rule discharged. Interim relief granted by this Court stands vacated.

zgs/-